CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70994 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-2044-17-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s Chep India Pvt. Ltd. **.....Appellant**

VERSUS

Commissioner of Central Excise, Noida **.....Respondent**

<u>APPEARANCE:</u>

Shri Pradeep Kumar Mittal, Advocate for Appellant
Shri Sandeep Kumar Singh, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 24 May, 2019
DATE OF DECISION : 24 May, 2019

FINAL ORDER NO. **71150 / 2019**

ARCHANA WADHWA

The appellant is engaged in the manufacture of wooden pallets/boxes, which are being cleared by them to their sister units. They duty payment was being done by them on the basis of 110% of the cost of production which was being arrived at on the basis of CAS-4 certificate. During the relevant period, the appellant continued to pay duty on the basis of previous CAS-4 certificate. However, as soon as they received and prepared the fresh CAS-4 certificate, which indicated higher assessable value, they paid the duty along with interest.

2. In the above background proceedings were initiated against them for confirming duty, interest and for imposition of penalty. Apart from confirming the demand, penalty to the extent of Rs.38,15,512/- also stands imposed upon them under the provisions of Section 11AC of the Central Excise Act.

3. The challenge in the present appeal is only to penalty. Learned advocate submits that the duty revision was shown by themselves only on their own, and there is bound to sometime difference between previous CAS-4 and preparation of new CAS-4.

4. We agree with the above contention of the learned advocate that this is not a case for imposition of penalty. The appellants cannot be said to be having any mala fide. Further they have paid the entire demand along with interest and the payment of interest itself is penal. In fact in such a scenario no proceedings should have been initiated against them. By observing as above, we set aside the imposition of penalty upon the appellant and allow the appeal to that extent.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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